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EXAMINER DESTA, ELIAS				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* STEFAN HAAKS, GERD MICHAELIS, and  
CHRISTIAN-MARIUS WEGNER

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Appeal 2009-005166  
Application 10/573,674  
Technology Center 2800

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Before JOSEPH F. RUGGIERO, JOSEPH L. DIXON, and MAHSHID D.  
SAADAT, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

### STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Final Rejection of claims 19-38. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Appeal Brief (filed May 7, 2008), the Answer (mailed July 10, 2008), and the Reply Brief (filed September 10, 2008) for the respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived (*see* 37 C.F.R. § 41.37(c)(1)(vii)).

### *Appellants' Invention*

Appellants' invention relates to the determination of the causes of malfunctions and disruptions in installations under investigation. Relevant causation data for the malfunction and disruptions is gathered and stored, and a questionnaire that is tailored to the installation under investigation is generated. Upon collection and analysis of the responses to the questionnaire by employees of the installation, a determination is made as to the causes of the malfunctions and disruptions. (*See generally* Spec. ¶¶ [00012]-[00013]).

Claim 19 is illustrative of the invention and reads as follows:

19. A method for determining causes of disruptive factors in an installation under investigation, comprising:

gathering and storing in a first database relevant causation data of performance limits for a plurality of related installations;

storing data relating to the installation under investigation in a second database;

generating a questionnaire from the causation data by tailoring the questionnaire based on data in the second database so that the questionnaire only contains questions relating to the installation under investigation;

collecting responses to the questionnaire questions from employees of the installation under investigation;

analyzing the employee responses to the questionnaire; and

determining the causes of disruptive factors of the installation based on the questionnaire analysis.

*The Examiner's Rejection*

The Examiner relies on the following prior art reference to show unpatentability:

Okazaki	US 6,909,990 B2	Jun. 21, 2005 (filed Feb. 12, 2003)
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Claims 19-38, all of the appealed claims, stand rejected under 35 U.S.C. § 102(e) as being anticipated by Okazaki.

ANALYSIS

*Independent claims 19 and 32*

Appellants' arguments with respect to the anticipation rejection of independent claims 19 and 32 initially focus on the contention that, in contrast to the claimed invention, Okazaki does not disclose the storing in a

database relevant causation data of performance limits for a *plurality* of related installations. According to Appellants (App. Br. 8-9; Reply Br. 2-4), the plant diagnosis system of Okazaki is not related to a plurality of related installations but, rather, only to *one* steam plant.

We do not find Appellant's arguments persuasive as we find ample support within the disclosure of Okazaki to support the Examiner's stated position (Ans. 4, 7, and 8). For example, Okazaki discloses that diagnosis computer 30 could include a plurality of computers which may separately be in charge of the diagnosis and data storage for *different plants*. (Okazaki, Fig. 1; col. 1, ll. 45-62, emphasis added). Further, Okazaki discloses that the diagnosis computer 30 will present a plant selection window on a diagnosis requester's user terminal enabling a selection of a particular plant and one or more items of plant machinery to be submitted for diagnosis (col. 16, ll. 1-11). In addition, we agree with the Examiner (Ans. 4 and 7) that Okazaki discloses a first database 8 for storing causation data of performance limits for a plurality of installations and a second database 3 for storing data relevant to an installation under investigation (Fig. 7; col. 5, l. 62-col. 6, l. 6 and col. 6, ll. 45-62).

We also find unpersuasive Appellants' argument (App.Br. 8-9; Reply Br. 2-4) that the questionnaire generated by Okazaki is not tailored to contain questions relating to an installation under investigation as claimed. We agree with the Examiner (Ans. 4 and 8) that Okazaki discloses the generation of a tailored questionnaire that contains only questions related to a plant under investigation (col. 8, ll. 27-67). As pointed out by the Examiner (Ans. 8), the title line of Okazaki's questionnaire illustrated in Figure 4 provides further indication that the questions are related to a

particular installation under investigation which, in the illustrated example, relates to the “No. 1 turbine” in “the XX power station.”

In view of the above discussion, since Appellants have not demonstrated that the Examiner erred in finding that all of the claimed limitations are present in the disclosure of Okazaki, the Examiner’s 35 U.S.C. § 102(e) rejection of independent claims 19 and 32 is sustained.

*Dependent claims 21, 23, 24, and 31*

We also sustain the Examiner’s anticipation rejection of dependent claims 21, 23, and 31. Appellants’ arguments (App. Br. 10; Reply Br. 4) to the contrary notwithstanding, we agree with the Examiner (Ans. 4 and 10) that Okazaki discloses the generation of a questionnaire from first and second databases as set forth in appealed claim 21 (Fig. 7; col. 8, ll. 27-67). Similarly, with respect to claims 23 and 24, we agree with the Examiner (Ans. 5 and 10) that Okazaki discloses the assignment of relevant causation data to target groups of a plant installation (Fig. 6, sections 11 and 12; col. 8, l. 36-col. 9, l. 20, and col. 10, ll. 20-55). With respect to claim 31, we further find Appellants’ arguments (App. Br. 12) unpersuasive of any error in the Examiner’s determination (Ans. 11) that Okazaki discloses that the generated questionnaire only contains questions for employees in a target group such as those assigned to the example installation (No. 1 turbine-XX power station). (Okazaki, col. 12, ll. 50-67).

*Dependent claims 20, 22, 25-30, and 33-38*

The Examiner’s anticipation rejection of dependent claims 20, 22, 25-30, and 33-38 is sustained as well. We find no error in the Examiner’s

finding of correspondence (Ans. 5-7 and 10-12) between the disclosed features of Okazaki and the claimed limitations. Aside from merely repeating the language of the dependent claims, Appellants' sole arguments merely reiterate those made with respect to independent claims 19 and 32, which arguments we found to be unpersuasive for all the reasons discussed *supra*. Simply pointing out what a claim requires with no attempt to point out how the claims patentably distinguish over the prior art does not comply with 37 CFR § 41.37(a)(vii) and does not amount to a separate argument for patentability. *See In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987).

#### CONCLUSION

Based on the analysis above, we conclude that the Examiner did not err in rejecting claims 19-38 for anticipation under 35 U.S.C. § 102(e).

#### DECISION

The Examiner's decision rejecting claims 19-38 under 35 U.S.C. § 102(e) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2009).

Appeal 2009-005166  
Application 10/573,674

AFFIRMED

ELD

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